



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 174144

PRELIMINARY RECITALS

Pursuant to a petition filed on May 6, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care, a hearing was held on June 2, 2016, by telephone.

The issue for determination is whether the respondent has established an overpayment of Child Care benefits to petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner received Child Care benefits during the period of May 17, 2015, through June 30, 2015.
3. On January 14, 2016, the respondent issued a Child Care overpayment notice to the petitioner indicating that she was overpaid Child Care benefits during the period of May 17, 2015, through June 30, 2015, in the amount of \$325.54.
4. Petitioner's W-2 Financial Employment Planner reported in a letter dated May 18, 2016, that petitioner participated in approved W-2 activities in May and June of 2015.

DISCUSSION

Wis. Stat. §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. §49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

There is no question that the county paid for child care services during the period in question. The respondent contends that petitioner was overpaid for child care benefits because she was not participating in W-2 activities in May and June of 2015. However, petitioner testified that she was participating in approved activity, and her W-2 Financial Employment Planner submitted a written statement indicating that petitioner was, in fact, participating in approved activities. She wrote:

...This letter is to confirm that [petitioner] was in compliance with employment search activity during May and June, 2015. She submitted employment search logs every week, which is an approved W-2 activity for daycare use.

Exhibit 3.

I conclude that petitioner's testimony is credible and supported by her worker's written statement. I thus will order the overpayment to be rescinded.

CONCLUSIONS OF LAW

Petitioner was participating in approved W-2 activity in May and June, 2015.

NOW, THEREFORE, it is **ORDERED**

That the matter be remanded to the county with instructions to rescind claim no. 2900437682 against petitioner and to cease recovery of the claim. These actions shall be completed within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

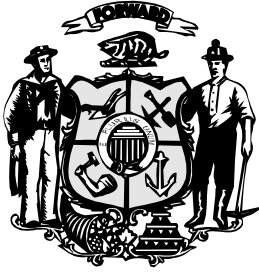
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of August, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2016.

Milwaukee Early Care Administration - MECA

Public Assistance Collection Unit

Child Care Fraud

